Lastly, defendant has refused to produce the will on the grounds that it would be irrelevant to the case. Under Pennsylvania law, it is well established that if there is any conceivable basis for relevancy, then doubts are to be resolved toward relevancy and discovery should be permitted. *Yoffee v. Golin*, 45 D.&C.2d 318 (1968).

In his brief, counsel for Reeder states that a will signifies nothing more than the state of mind of the testator. As such, he argues, the will cannot rise to the level of an implied contract, and is therefore irrelevant. This ignores the fact that Grosh has not asserted that the will is, in itself, absolute proof of an implied contract. Rather, counsel for Grosh points out that the will may be one piece of evidence signaling Reeder's state of mind at the time that it was written. As such, it may be relevant to substantiate Grosh's claims as to Reeder's intent to share the properties in return for services provided.

If there is any doubt as to the will's potential relevance, we need only look to *Knauer v. Knauer,* 323 Pa. Super. 206, 470 A.2d 553 (1983), a case that counsel for Reeder insists is controlling on the issue. Like the facts before us, *Knauer* involved an unmarried couple who cohabited for eight years, with the woman performing a number of household and professional services for her partner. When they separated, she successfully brought an action to recover the value of her services. It is important to note that, in considering her claim of an implied contract, the court looked at the terms of the will that her partner had executed.

The relevancy of the will in the present case cannot be fully determined until it is produced and examined. Production of the will does not constitute an unreasonable embarrassment or annoyance to defendant, and ther is a conceivable basis for relevancy. Defendant's objection to the interrogatory is dismissed and defendant is ordered to comply with the request to produce the copies of the will.

ORDER OF COURT

January 22, 1986, defendant's objection to the interrogatory is dismissed and the defendant is ordered to comply with the request to produce the copies of the will.

UPPERMAN v. HAYS, C.P. Franklin County Branch, No. 77 of 1985-C

Equity - Antenuptual Agreement - Life Tenant - Trustee

1. Where an antenuptual agreement sets forth a complete plan to dispose of the parties estates, including a life estate for the survivor, the life tenant who sells real estate covered by the agreement is a trustee.

2. Generally, a court will not interfere with the life tenant's control of property unless the remainderman makes a strong case for interference.

3. Where life tenant may consume income and necessary principal for her support and maintenance, she is restricted in the consumption of principal.

Joel R. Zullinger, Esquire, Counsel for Plaintiff

M. David Halpern, Esquire, Counsel for Defendant

OPINION AND ORDER

EPPINGER, S. J., January 8, 1986:

About to be married, Ralph H. Maun (Ralph) and Cora Maun Hays (Cora), entered into an antenuptual agreement, joining their real estate and personal property to be held by them as tenants by the entireties under the terms of the agreement.

Paragraph 6 of the agreement provided that if Ralph died first, the sum of $10,000 was to be paid to his daughter, Lorraine Upperman (Lorraine). Cora was to have the right to use what was left of their jointly held estate at Ralph's death for her support and maintenance, "including the income therefrom and as much of the principal as may be necessary for this purpose." At Cora's death, Lorraine receives twenty percent of what is left and the rest is divided between Lorraine and three of Cora's children.

Ralph died, Lorraine got her $10,000, and now she is concerned about what is left. In a complaint which she filed she asks Cora for an accounting, alleging among other things that Cora sold two tracts of real estate and won't say what she did with the proceeds. Under the agreement Cora is permitted to sell real estate but only

at the fair market value and must invest the proceeds in other real property or securities which must be held subject to the terms of the agreement. The complaint alleges also that Lorraine has made a demand on Cora for an accounting and that nothing has been done. It also mentions that Ralph owned one hundred shares of First National Bank and seven hundred shares of Citizens National Bank, both of Greencastle.

Applicable statutory language is found in 20 Pa.C.S.A. §6113 which provides that a person having a present interest in personal property, or in the proceeds of the conversion of real estate, which is subject to a future interest, is a trustee of this property with the ordinary powers and duties of a trustee. Cora maintains that this section only applies to personal property, but the argument is without merit as the section specifically refers to "proceeds of the conversion of real estate." So we find that the complaint supports the conclusion that Cora is a trustee.

In *In re Gramm's Estate,* 420 Pa. 510, 218 A.2d 342 (1966), a testator gave his widow a life estate with full power of consumption of the principal to meet her needs even to its exhaustion. In this case the court held that the consumption was to be measured by the widow's needs and concluded that the testator's intent to place a definite restriction on the consumption of principal was emphasized by the fact that he contemplated the possibility that the principal might not be exhausted and provided a gift over.

During her lifetime the widow converted the estate and placed the assets in a new trust for the benefit of herself for life and at her death to two nieces. So the nieces got the remainder interest set up by the testator instead of his sister who then cited them to show cause why the nieces should not file an account of the assets held by testator's widow, their aunt, at the time of her death.

Generally the court said it will not interfere with the first taker's control of the property unless the remainderman makes out a strong case for interference and that the amount required for the widow to meet her needs rests in her discretion absent fraud or bad faith.

However, the court decided that the actions of the widow in this case were such as to command judicial interference that the

clearly expressed intent of the testator be not completely thwarted and held that the nieces as the personal representative of the widow were required to render an accounting.

The agreement between Ralph and Cora set forth a complete plan for disposing of their joint estates. After Ralph's death Cora is permitted to consume and use the estate for her support and maintenance, including the income *and as much of the principal as may be necessary for this purpose.* (Emphasis added). As in *Gramm*, we find that this phraseology placed a definite restriction on the consumption of the principal and that this was emphasized by the fact that Ralph contemplated some would be left to be divided after Cora's death. There was also a provision in the agreement that after the death of one of them, the survivor had the right to sell real estate for its fair market value but the proceeds were to be reinvested in other real property or securities which are to be held subject to the agreement. From this it can be concluded Cora did not have free reign in the use of the principal.

As in *Gramm,* the actions of the widow may be such as to command judicial interference. The complaint states a cause of action and the demurrer will be overruled.

ORDER OF COURT

January 8, 1986, the demurrer is overruled.

ROACH V. FAUST, C.P. Franklin County Branch, No. 263 of 1981

Visitation - Father in Prison - Murder of Mother

1. A party seeking to deny visitation rights to a natural parent must show clear and convincing evidence that the parent's presence is a grave threat to the child.

2. The court may, in rare instances, suspend visitation without a showing of severe mental or moral deficiencies in the parent so as to constitute a grave threat to the child.

3. Where father is in prison for killing mother, an event which child witnessed, and evidence shows that the visits to father have had adverse psychological effects on 7-year-old child, court will suspend visitation.

Patrick J. Redding, Esq., Counsel for Plaintiffs

Robert C. Schollaert, Esq., Counsel for Defendant

OPINION AND ORDER

KELLER, J., October 31, 1985:

On June 3, 1985, the plaintiffs presented their petition for a rule to be issued upon the defendant to show cause why the partial custody/visitation awarded to the defendant should not be suspended pending his release from prison. An order was signed the same date directing the rule to issue; scheduling July 15, 1985 at 2:00 o'clock p.m. as the date and time for hearing on the petition; and pending disposition of the petition suspending the visitation rights of the defendant. On July 11, 1985, the defendant's petition for additional visitation rights with his son was presented and an order entered setting July 15, 1985 at 2:00 o'clock p.m. as the date and time for hearing on the petition, and further ordering the parties and child to meet with the Court's Child Custody Mediation Officer, Della S. Stapleton, on August 14, 1985 at 10:00 o'clock a.m. for a conference to determine whether the issue can be resolved by mediation. Hearings were held on July 15, 1985 and September 30, 1985. An order was entered on September 16, 1985 directing the Warden of the State Correctional Institution in Dallas, Pa. to deliver the defendant into the custody of the Sheriff for Franklin County for transportation to the Franklin County Prison so he could attend the hearings scheduled for September 30, 1985. Mr. Faust did attend the second hearing and did testify. Pursuant to the request of the Court counsel for the parties filed proposed Findings of Fact, Discussion of Law and Conclusions of Law on October 14, 1985. The matter is now ripe for disposition.

FINDINGS OF FACT

1. The plaintiffs are Benjamin H. Roach and Anna L. Roach, hereafter grandparents. They reside at 675 Shadyside Drive, Chambersburg, Pa.